

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LUIS HECTOR FUGON	§	
v.	§	CIVIL ACTION NO. 6:09cv218
IMMIGRATION & CUSTOMS ENFORCEMENT	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Luis Fugon, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his confinement. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Fugon says that he was ordered removed by an immigration court on January 21, 1999, and that he is seeking enforcement of this order, citing Zadvydas v. Davis, 121 S.Ct. 2491 (2001). The Respondent was ordered to answer the petition and has filed a response saying that Fugon was convicted of aggravated sexual assault and aggravated robbery, and so is currently in state custody; the Respondent states that the order of removal cannot be carried out until Fugon is released from this custody. Channer v. Hall, 112 F.3d 214, 216 (5th Cir. 1997).

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition for habeas corpus relief be dismissed with prejudice. The Magistrate Judge observed that the six-month removal period set out in Zadvydas does not start to run until the petitioner's state term of incarceration ends, and so because Fugon is still serving his state sentences, this period has

not yet commenced. The Magistrate Judge also recommended that Fugon be denied a certificate of appealability *sua sponte*.

Fugon received a copy of the Magistrate Judge's Report on or before November 6, 2009, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Luis Fugon is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 9th day of December, 2009.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**